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October 13, 1983

Dr. Robert L. Brunelle, Commissioner
Department of Education
State House Annex
Concord, New Hampshire 03301

Dear Commissioner Brunelle:

You have requested this office's advice regarding school district liability for special education expenses in two cases. One case involves a 19 year old handicapped student who resides at a nursing home in Piermont, New Hampshire. This student's mother currently lives in Cornish, New Hampshire. The other case relates to a 12 year old educationally handicapped student who resided in North Stratford, before being placed into the custody of the New Hampshire Division of Welfare at the age of nine months. In the first case, Cornish school district has refused to pay educational expenses for the reason that the student has turned 18, and therefore, according to Cornish, is no longer in the legal custody of a parent residing in Cornish. In the second case, the school district has requested a deficit appropriation for the student's educational expenses. The voters in North Stratford have voted not to fund this deficit appropriation. We conclude, in both cases, that the Department of Education should take enforcement action under Ed 1131.01 to ensure that the liable school districts pay the educational expenses of these students.

The Cornish school district's contention that it is no longer liable for educational expenses since the student has turned 18 is unsupported by the statutes. RSA 186-C:19(I)(c) provides:



"For the purposes of this chapter, children between the ages of 18 and 21 shall be deemed to be in the legal custody of their parents if they were in such custody upon reaching the age of 18."

Cornish interprets this provision as applying only to children placed in a state institution, on the basis that RSA 186-C:19, I(c) appears as a subparagraph in a paragraph relating to the payment of expenses for children in state institutions.¹ This interpretation, however, fails to account for the literal language of RSA 186-C:19(I)(c) which states that this method of determining legal custody shall be used "for the purposes of this chapter." Cornish's construction of RSA 186-C:19(I)(c) requires that the phrase "for the purposes of this chapter" be interpreted as applying only to paragraph 186-C:19 and not to Chapter 186-C. The literal language of RSA 186-C:19(I)(c) compels us to reject this interpretation limiting the applicability of this subparagraph to children placed in state institutions. Rather, we conclude that RSA 186-C:19(I)(c) applies to any educationally handicapped child, who is placed in a home for children, health care facility, or a state institution.

Therefore, in the first case, since the student was in the legal custody of her parent and was placed in a health care facility before turning 18, she continues to be in the legal custody of her parent until age 21. Under RSA 193:27 and

¹In a letter of October 7, 1982, to the Assistant Superintendent of SAU 6, Gerald Zelin, Esq., attorney for the Cornish School District, writes, "The legislature has provided that, for children at the Laconia State School and New Hampshire State Hospital, 'children between the ages of 18 and 21 shall be deemed to be in legal custody upon reaching the age of 18'.... The statute does not contain an analogous provision for children between the ages of 18 and 21 in homes for children or nursing homes."

Dr. Robert L. Brunelle, Commissioner
October 13, 1983
Page 3

193:29, where students are in the legal custody of a parent, the school district where the parent resides is liable for educational expenses until the student reaches age 21. In this case, because the parent having legal custody resides in Cornish, Cornish is liable. If Cornish refuses to pay, the Department should institute enforcement action against Cornish pursuant to Ed 1131.01.

In the second case, liability for educational expenses is also controlled by RSA 193:29. Under this statute, the sending district is liable for the educational expenses of the handicapped child. The term "sending district" is defined by RSA 193:27, IV, as the district where the "child last resided before placement in a home for children...." In this case, the child resided in North Stratford before the Division of Welfare obtained custody.² Since a legal change of custody to the Division of Welfare is considered placement in a home for children under RSA 193:27, it is clear that the educational expenses of the child should be paid by the district where he resided before placement. In this case, the liable district is North Stratford. Enforcement action should be brought against North Stratford if it continues to refuse to pay.

Very truly yours,

Leslie J. Ludtke
Assistant Attorney General
Division of Legal Counsel

LJL/smg
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²Ed 1101.25 defines the term "home for children" as including custody of children.